IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.16170 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA **Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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SHRI VARAHI KELAVANI MANDAL & 1 - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HRIDAY BUCH for Petitioner(s) : 1 - 2.
MR SHIVANG SHUKLA, AGP for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 26/07/2007
ORAL JUDGMENT

(1) RULE. Learned Assistant Government Pleader is directed to waive service and the petition is taken up for final hearing and disposal today.

(2) The petitioner was granted permission to commence 5th additional division in Standard VIII on 05.01.2006 subject to various conditions. On 11.11.2006, it appears that a surprise visit was undertaken by the respondent authority and, according to the petitioners, against total strength of 1149 students present on the said day 99 were found absent. In so far as VIIIth Standard is concerned, 372 students were present against which 31 were found absent. On 11.12.2006 the application moved by the petitioners for additional division of Standard VIII was rejected on the grounds that – (i) during surprise inspection the absentee students were proportionately more; and (ii) the lease agreement for playground was only of duration of one year. The petitioners, therefore, carried the matter in appeal. Vide order dated 25.05.2007 the appellate authority has dismissed the appeal by merely stating that at the time of hearing the submissions made on

behalf of the petitioner-Trust did not give any reason for the absence of the students nor are leave reports of the students produced and the oral submission regarding difficulty of transportation is not accepted. The appellate authority had, therefore, confirmed the order made by the Commissioner on 11.12.2006.

(3) Heard Mr.Hriday Buch, learned advocate for the petitioners, and Mr.Shivang Shukla, learned Assistant Government Pleader appearing on behalf of the respondent Nos.1 and 2.

(4) On behalf of the petitioners it is contended that the impugned order does not reflect any valid reasons for dismissing the appeal and hence, the application moved by the petitioners for running 5th additional division of Standard VIII ought to be granted by issuing necessary direction to the respondent authority.

(5) As against that the learned Assistant

Government Pleader contended that in the first instance the playground was available only for limited period of one year and in absence of the requisite playground being available the authorities were justified in rejecting the application moved by the petitioners. When it was pointed out to the learned Assistant Government Pleader that the petitioners had placed evidence before the appellate authority regarding extension of the lease of the playground in question, the learned Assistant Government Pleader submitted that the area of the playground did not meet with the requirements and hence, no interference was called for.

(6) It is not necessary to enter into any discussion on merits of the issue. Suffice it to state that the orders made by the respondent authorities do not deserve to be upheld considering the fact that both the orders are at variance with each other and do not reflect any application of mind. The order

of the appellate authority, as already noticed hereinbefore, does not even raise the issue of non-availability of playground or the area of the playground being insufficient. The said contention has come up for the first time before this Court. The appellate authority has merely referred to the absence of students on the day of surprise inspection, namely, 11.11.2006. However, when both the orders are examined on this issue, it becomes apparent that except for stating that the absenteeism is more no facts have been record in either of the orders to show as to how the absenteeism is more when one considers the figures stated by the petitioners. Even in the affidavit-in-reply there is no statement made that the figures mentioned in the petition are incorrect.

(7) In the circumstances, it is apparent that the appellate authority has merely confirmed the order made by the Commissioner without

application of mind and the order being a non-speaking order, in absence of any reasons, cannot be sustained. Accordingly the order dated 25.05.2007 made by the appellate authority is quashed and set aside. The appeal filed by the petitioners shall stand restored to the file of the appellate authority for being decided afresh in accordance with law. The appellate authority shall give a reasonable opportunity of hearing to the petitioners and pass a reasoned order within a period of a fortnight from today, without waiting for a certified copy or writ of this order. Learned advocate for the petitioners states that the petitioners shall not ask for adjournment, except in a circumstance which is beyond the control of the petitioners.

(8) The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*